



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

February 24, 1998

Ms. Nancy Barbour
Staff Attorney
Legal and Compliance, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR98-0522

Dear Ms. Barbour:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112824.

The Texas Department of Insurance (the "department") received a request for several categories of information concerning the Prudential Insurance Company of America ("Prudential"). Although you have released some of the information to the requestor, you claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. In addition, because you assert that a third party's privacy or property interest may be implicated by this request, you raise section 552.305 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of documents you have submitted.¹

Pursuant to section 552.305 of the Government Code, this office notified Prudential of the request. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Prudential failed to respond to the notice. Therefore, we have no basis to conclude that Prudential's information is excepted from disclosure. See Open Records Decision Nos. 639 (1996) at 4 (to prevent disclosure of

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 (1990) at 5 (party must establish prima facie case that information is trade secret), 542 (1990) at 3. The information pertaining to Prudential for which you have invoked the application of section 552.305 must, therefore, be released to the requestor.

Next, you assert that Prudential's enrollee information is excepted from public disclosure by common-law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 of the Government Code encompasses common-law and constitutional privacy. Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has determined that common-law privacy protects certain financial information, including information about personal financial decisions. *See* Open Records Decision No. 600 (1992) at 9-12. In the instant case, we believe that the identities of Prudential's enrollees constitute private information. Therefore, the department must redact all enrollee identifying information, including names, street addresses, telephone numbers, social security numbers, names of family members, names of employers, and individual and group policy numbers.² We agree with most of the markings you have made for information protected by privacy. We have made additional markings where you have failed to deidentify an enrollee's name, and we have indicated where we disagree with your markings as to information that is not protected by privacy.

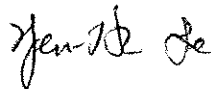
You also assert that certain documents are medical records that are confidential pursuant to section 552.101 in conjunction with the Medical Practice Act. Section 552.101 encompasses information protected by other statutes. The Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). The documents submitted to this office include medical records access to which is governed by provisions outside the Open Records Act. Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The medical records submitted to this office for review may only be released as provided by the MPA.

²Common-law privacy may also protect an individual's medical history, although it does not protect all medically related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. *See* Open Records Decision No. 370 (1983). However, in light of our conclusion in the instant case that the enrollees' identities must be withheld from disclosure, such individual determinations regarding medically related information are unnecessary.

Lastly, you contend that section 552.111 excepts a draft report from public disclosure. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Furthermore, in Open Records Decision 559 (1990), this office concluded that a preliminary draft of a document that is intended for public release in a final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document and as such could be withheld pursuant to the statutory predecessor to section 552.111. Thus, section 552.111 also excepts draft documents to the extent that the draft documents pertain to the policymaking function of the governmental body. We conclude that you may withhold the draft report under section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 112824

Enclosures: Marked documents

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